

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Johnny L. Perry,	:	Criminal No. 2:05-cr-00245
	:	(Civil Case No. 2:07-cv-00779)
Petitioner	:	
v.	:	Judge Holschuh
United States of America,	:	Magistrate Judge Abel
Respondent	:	

Order

Petitioner Johnny L. Perry brings this action under 28 U.S.C. §2255 challenging his convictions for conspiracy to interfere with interstate commerce by means of robbery, in violation of 18 U.S.C. §1951, and aiding and abetting the use or carrying of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §924(c). This matter is before the Court on Magistrate Judge Abel's May 24, 2010 Report and Recommendation that the petition for writ of habeas corpus under 28 U.S.C. §2255 be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition.

The petition alleges that Perry was improperly sentenced and denied the effective assistance of counsel. However, Perry previously filed a petition to vacate sentence under 28 U.S.C. § 2255. On April 1, 2009, final judgment was entered

dismissing that petition. (Doc. 61.) Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a district court does not have jurisdiction to entertain a successive post-conviction motion or petition for writ of habeas corpus in the absence of an order from the court of appeals authorizing the filing of the successive motion or petition. 28 U.S.C. § 2244(b)(3)(A). When a second or successive petition is filed in the district court, it must be transferred to the United States Court of Appeals for the Sixth Circuit for that Court to determine whether the petitioner may maintain a successive petition. *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997)(per curiam).

Although the parties were advised of their right to file objections to the Report and Recommendation, and of the consequences of failing to do so, no objections have been filed. The Court therefore ADOPTS the Report and Recommendation.

The petition is hereby TRANSFERRED to the United States Court of Appeals for the Sixth Circuit for consideration under 28 U.S.C. § 2244(b)(3)(A).

Date: June 16, 2010

/s/ John D. Holschuh
John D. Holschuh
United States District Judge